IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 340 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMIBEN SANAJI THAKORE WD/O. LATE SANAJI MADHAJI THAKORE & 1 - Petitioner(s)

Versus

OIL & NATURAL GAS CORPORATION LTD. & 1 - Respondent(s)

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Appearance :

MR KRISHNA G PILLAI for Petitioner(s) : 1 - 2.
RULE NOT RECD BACK for Respondent(s) : 1,
M/S TRIVEDI & GUPTA for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 22/02/2006

CAV JUDGMENT

1.The short facts of the case are that the husband of the petitioner who was the employee of ONGC was reported

missing from 15.3.92. The ONGC has considered as if the husband of the petitioner has resigned with effect from 20.7.92. Since the husband of the petitioner was not traced for a period of more than 7 years the petitioner had applied to the civil court for declaration and ultimately the judgment and the decree was passed on 6.2.2003 by the court of Civil Judge (SD), Gandhinagar whereby the declaration was given that the husband of the petitioner be presumed as dead after 15.3.1992. The petitioner has applied for appointment on compassionate grounds on the basis that the policy prevailing with the ONGC in the year 1992. It is the case of the ONGC that the new policy has come into force with effect from 1998 i.e with effect from 1.6.98.

2. Heard Mr.Pillai, learned Counsel appearing for the petitioner and Mr.Nayak, learned Counsel for M/s.Trivedi and Gupta for the respondent ONGC.

3. As such it appears that on the following aspects there is no dispute amongst the parties:

(i) The husband of the petitioner was an employee of ONGC, who joined service from 1968 and approximately completed 24 years of service. The husband of the petitioner would have reached the age of superannuation on 31.8.2006.

(ii) For the policy prevailing for compassionate appointment prior to 1999, had the husband of the petitioner been treated dead, the dependent member of the deceased employee of ONGC (husband of the petitioner) (hereinafter referred to as “the deceased employee”) would have been entitled for compassionate appointment.

(iii) The declaration is given by the Civil Court as the deceased employee “dead” as he was found missing since 15.3.1992 and the declaration was given by the Civil Court on 6.2.2003. As per the order dated 22.9.2004 passed by this Court (Coram: Akil Kureshi, J.), Special Civil Application No.12627 of 2003, the declaration has come into effect after the expiry of the period of seven years and consequently from 15.3.1999 onwards.

(iv) The petitioner, who is the widow is a dependent member of the deceased employee.

4. The major controversy deserves to be considered is on the aspects of applicability of the Scheme for providing compassionate appointment. It is the case of the petitioner that the new Scheme which has been introduced after 1998 was an optional Scheme and the petitioner, in any case, was not in service at the

relevant point of time and, therefore, could not have opted for the New Scheme for monetary benefits in lieu o the compassionate appointment, whereas it is the case of the respondent ONGC that the Scheme applies to one and all after 1998 and after 1998, there is no Scheme for compassionate appointment in operation.

5. Mr.Pillai, learned Counsel appearing for the petitioner relied upon certain appointment orders issued by ONGC for compassionate appointment, which as per Mr.Nayak, learned Counsel appearing for ONGC are pertaining to the fresh appointment and on the basis of the preference given in appointment to the members of the family of the deceased employees, but are not purely compassionate appointment.

6. The ONGC Composite Social Security Scheme, 1998 is brought to the notice of this Court and Clause 1 of the Scheme, providing for short title, commencement and application, reads as under:

> “The Scheme covers all regular employees (defined as members hereafter) of the ONGC who were on the pay roll of the ONGC as on 1st June 1998 and those who shall join the service of ONGC on or after 1st June, 1998.”

7. Therefore, the applicability of the Scheme is not dependent upon the option to be submitted by the employee who is on the pay roll, but becomes effective automatically. Further, such Scheme is to apply to all those employees, who were on the pay roll of ONGC on 1.6.1998.

8. It is true that the deceased employee is found missing from 1992 onwards and, therefore, he was not actually on the pay roll on 1.6.1998. However, in view of the decision of this Court (Coram: Akil Kureshi, J.) dated 22.9.2004 in SCA No.12627 of 2003, which is not challenged by either side, the deceased employee would continue as an employee of ONGC till 15.3.1999 i.e. Until the expiry of seven years from the date on which the deceased employee was reported missing and, therefore, notionally the deceased employee would continue as an employee of ONGC till 15.3.1999. If such is the situation, then the New Scheme of ONGC Composite Social Security which has come into force from the year 1998 shall automatically apply even in case of the deceased employee in the present case. It is true that the Scheme provides for contribution by the employee concerned and thereafter the benefit to

the member of the family of the employee. But once the scheme is to apply automatically, merely because actual contribution is not paid would not disentitle the member of the family of the deceased employee, the benefit of the new scheme in view of the peculiar facts and circumstances of the present case namely; that the deceased employee was found missing, the period of seven years had not expired and he is deemed as dead in law after the expiry of seven years. In such circumstances, even if the contribution is not paid by the deceased employee for the Scheme, at the most the ONGC may deduct the amount of contribution from the cash benefits payable to the dependent members of the family of the deceased as per the Scheme. The aforesaid is coupled with the aspects that even as per the ONGC, Composite Social Security Scheme, 1998 is only in force and no Scheme for compassionate appointment is available.

9. It is well settled that the dependent member of the deceased employee cannot seek as of right the compassionate appointment and such demand is to be construed strictly as per the Scheme. It is also well settled that the compassionate appointments are the appointments to be made without undergoing the regular

selection process and, therefore, normally it may not meet with the test of Articles 14 and 16 of the Constitution of India, since it is a mode for appointment otherwise than regular selection process and, therefore, unless all conditions are satisfied for entitlement of the compassionate appointment, including that for eligibility criteria, this Court normally would not issue a writ of mandamus directing the public authority for giving compassionate appointment. The reference may be made to the decision of the Apex Court in case of **"National Hydroelectric Power Corporation and Another v. Nanak Chand and Another", reported in 2004(12) SCC, 487**.

10. Therefore, if the matter is examined in light of the aforesaid legal position as the Scheme for compassionate appointment was not in force in the year 1999, it can hardly be asserted as of right by the petitioner that the respondent ONGC must be directed to give compassionate appointment. The reference may be made to the decision of the Division Bench of this Court in case of **"Rajesh Ramdin Pasi v. Group General Manager", reported in 2005(0) GLHEL 209997**, wherein the view taken is that none can claim compassionate appointment as a matter of right when there are

specific Rules.

11. However, it does appear that the petitioner would be entitled to the cash benefits as per the ONGC Composite Social Security Scheme, 1998 after the deduction of amount of contribution by the deceased employee towards the said Scheme till 1999.

12. Mr.Pillai, learned Counsel for the petitioner, by relying upon the decision of this Court in case of **"Manoj L. Abhani v. State of Gujarat & Anr.", reported in 2003(4) GLR, 3074** contended that if the respondents have not taken account application of the petitioners for number of years, the direction is required to be given for appointment of the petitioner on the suitable post. Even if such principles are accepted, then also if in the year 1999 when the right accrued to the petitioner, the Scheme was not in force of compassionate appointment, no directions can be given by this Court and, therefore, the judgement has no applicability to the facts of the present case. Mr.Pillai, learned Counsel appearing for the petitioner also relied upon the decision of the Apex Court in case of **"Balbir Kaur and Another v. Steel Authority of India Ltd. And Ors.", reported in AIR 2000 SC, 1596** and

contended that the benefits of compassionate appointment cannot be denied to the petitioner on the ground that new Scheme is introduced. In the said decision before the Apex Court, the New Scheme was considered and it was found by the Apex Court at para 17 that even after the new agreement, the earlier agreement and the benefits were continued which is not in the present case and, therefore, the judgement is of no help to the petitioner. Mr.Pillai, learned Counsel appearing for the petitioner also relied upon the decision of this Court in case of **"Chanabhai Bababhai Maru v. President/Secretary Dhandhuka Nagar Panchayat", reported in 1993(2) GLH, 822** for contending that merely because the deceased was to get family pension fund, the compassionate appointment cannot be denied. He also relied upon the decision of this Court in case of **"Chaganbhai Govindbhai Mevada v. State of Gujarat", dated 29.1.2003 in Special Civil Application No.10021 of 2001**. Here the denial is not on the ground that family pension is available, but the denial is on the ground that the Scheme was not in existence and, therefore, the judgements are of no help to the petitioner.

13. Mr.Pillai, learned Counsel appearing for the

petitioner by relying upon the order dated 17.4.2000 issued by the ONGC contended that the appointment is given to Shri T. Padmanathan in the post of Assistant Technician on the premises that he is a dependant of the deceased employee. It appears that in the new Scheme at the time of appointment by regular selection the priority is to be given to the dependent member of the family of the deceased employee, therefore, the same would mean that if fresh recruitment is to be undertaken preference or some priority may be given. Such cannot be read to envisage the right or to seek mandamus of this Court for directing the respondent to give compassionate appointment. Mr.Pillai also submitted that in the circular issued by the ONGC Mazdoor Sangh, there is a reference to the appointment given on compassionate ground and, therefore, he submitted that the aforesaid circular shows that the ONGC has continued with the Scheme of compassionate appointment. Even if that clause is read as it is, it refers to the death of the employee prior to 1998. Further the circular by ONGC Mazdoor Sangh cannot be treated for the existence of the Scheme or for enforcing the right of the petitioner for compassionate appointment and hence, the said contention cannot be accepted.

14. In view of the above discussion, no directions can be given to the respondent to give compassionate appointment to the petitioner, but it is clarified that the petitioner would be entitled to the cash benefits as per the ONGC Composite Social Security Scheme, 1998 after deduction of the amount of contribution by the deceased employee towards the said Scheme till 1999. To say in other words, the cash benefits minus the contribution which otherwise was to be collected from the deceased employee till 1999, shall be paid to the petitioner. The aforesaid exercise shall be completed within a period of two months from the date of receipt of the order of this Court.

15. The petition is partly allowed to the aforesaid extent. Considering the facts and circumstances, no order as to costs.

16.2.2006 **(Jayant Patel, J.)**

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